

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

IRR GAS STATION CORP.

Plaintiff,

v.

PUMA ENERGY CARIBE, LLC.

Defendant.

CIVIL NO. 19-2146 (GAG)

OPINION AND ORDER

Plaintiff IRR Gas Station Corp. (“IRR Gas” or “Lessor”) filed suit against Defendant PUMA Energy Caribe (“Puma” or “Lessee”) in the Commonwealth of Puerto Rico Court of First Instance alleging breach of contract and requesting compensatory damages. (Docket No. 1). On December 20, 2019, Defendant removed the case to this Court based on diversity jurisdiction, 28 U.S.C. §1441, arguing that the controversy involves declaratory relief that exceeds \$75,000, 18 U.S.C. §1332(a). Id.

Pending before the Court is Defendant’s Motion to Dismiss for lack of subject matter jurisdiction, FED. R. CIV. P. 12(b)(1), and failure to state a claim upon which relief can be granted pursuant to FED. R. CIV. P. 12(b)(6). (Docket No. 9). Defendant also avers that the complaint should be dismissed for lack of standing or ripeness. Id. at 11. At the same time, Defendant posits that the breach of contract claim fails because Puma has complied with the rent payments in the lease agreements. Id. IRR Gas timely opposed Defendants’ motions to dismiss. (Docket No. 16).

After reviewing the parties’ submissions and the pertinent law, the Court **DENIES** Defendant’s Motion to Dismiss at Docket No. 9.

I. Relevant Facts and Procedural Background

IRR Gas alleges that between May and September 2013, it leased the Service Stations 936 and 561 to Puma. (Docket No. 1-1 ¶¶ 5, 14). Plaintiff posits that Defendant has complied with the

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1 payments, yet failed to provide the adequate equipment and property maintenance, as required by
2 the parties' contracts. Id. ¶ 18. According to IRR Gas, the cost of this maintenance, "throughout the
3 years is calculated in a sum of no less than \$100,000.00, per each of the stations." Id. ¶ 23.

4 Plaintiff also contends that Defendant breached the contracts by failing to repair the
5 damages sustained after Hurricane María, not filing the required report to the Environmental
6 Quality Board ("EQB") and not obtaining property and public liability's insurance, as established
7 in the leases. Id. ¶¶ 24-26. IRR Gas avers that its loss, for this claim's purpose, "is valued in a sum
8 of no less than \$2,000,000.00 for each of the stations." Id. ¶ 27. Furthermore, the damages caused
9 by the risk of losing the permits, due to the service stations' closure, is calculated in the sum of
10 \$1,500,000.00 for each of the stations. Id. ¶28.

11 On January 23, 2020, Puma filed a motion to dismiss IRR Gas's Complaint under FED. R.
12 Civ. P. 12(b)(1) and Rule 12(b)(6). (Docket No. 9). Defendant argues that Plaintiff lacks standing
13 to sue as it "has not suffered an injury in fact and these claims are abstract and/or hypothetical." Id.
14 at 14. In the alternative, Puma posits that Plaintiff's claims should be dismissed at this stage under
15 the doctrine of ripeness provided that the events in the Complaint have not occurred. Id. Defendant
16 alleges that Plaintiff's breach of contract claim is not actionable since Puma has complied with the
17 payments of both service stations. Id. at 15. Moreover, Defendant states that Plaintiff is responsible
18 for restoring the service stations because the damages suffered were caused by Hurricane María, an
19 unforeseeable event and the lease agreements' clauses state that the Lessor is responsible for
20 restoring any part of the properties damaged or destroyed "by any cause not attributable or
21 ascribable to Lessee." Id. at 16.

22 Plaintiff opposed, (Docket No. 16), and Defendant replied. (Docket No. 23).
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II. Standard of Review

As courts of limited jurisdiction, federal courts must construe their jurisdictional grants narrowly. See Destek Grp., Inc. v. State of New Hampshire Pub. Utilities Comm’n, 318 F.3d 32 (1st Cir. 2003). When subject matter jurisdiction is challenged under Rule 12(b)(1), FED. R. CIV. P. 12(b)(1), the party asserting jurisdiction carries the burden of demonstrating its existence. See Valentín v. Hospital Bella Vista, 254 F.3d 358, 62-63 (1st Cir. 2001). The Court, when deciding whether to dismiss a complaint for lack of subject matter jurisdiction, “may consider whatever evidence has been submitted, such as . . . depositions and exhibits.” Aversa v. United States, 99 F.3d 1200, 1210 (1st Cir. 1996). See also Torres v. Bella Vista Hosp., Inc., 523 F.Supp.2d 123, 132 (D.P.R. 2007). Motions brought under Rule 12(b)(1) are subject to the same standard of review as Rule 12(b)(6). See Negrón-Gaztambide v. Hernández-Torres, 35 F.3d 25, 27 (1st Cir. 1994); Torres, 523 F. Supp. 2d at 132.

Similarly, when considering a motion to dismiss for failure to state a claim upon which relief can be granted, FED. R. CIV. P. 12(b)(6), the Court analyzes the complaint in a two-step process under the current context-based “plausibility” standard established by the Supreme Court. See Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir.2012) (citing Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 12 (1st Cir. 2011) which discusses Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)). First, the Court must “isolate and ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements.” Schatz, 669 F.3d at 55. A complaint does not need detailed factual allegations, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678–79. Second, the court must then “take the complaint’s well-pled (i.e., non-conclusory, non-speculative) facts as true, drawing all reasonable inferences in the pleader's favor, and see if they plausibly narrate a claim for relief.”

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1 Schatz, 669 F.3d at 55. Plausible, means something more than merely possible, and gauging a
2 pleaded situation's plausibility is a context-specific job that compels the court to draw on its judicial
3 experience and common sense. Id. (citing Iqbal, 556 U.S. at 678–79). This “simply calls for enough
4 facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element.”
5 Twombly, 550 U.S. at 556.

6 “[W]here the well-pleaded facts do not permit the court to infer more than the mere
7 possibility of misconduct, the complaint has alleged-but it has not ‘show[n]’-‘that the pleader is
8 entitled to relief.’” Iqbal, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)). If, however, the “factual
9 content, so taken, ‘allows the court to draw the reasonable inference that the defendant is liable for
10 the misconduct alleged,’ the claim has facial plausibility.” Ocasio-Hernández, 640 F.3d at 12
11 (quoting Iqbal, 556 U.S. at 678).

III. Discussion and Legal Analysis**A. Standing and Ripeness**

14 Defendant argues that Plaintiff lacks standing because the following damages are
15 speculative: (1) the EQB may impose sanctions and close the stations; (2) Plaintiff has lost clientele
16 due to the service stations being closed or that it has a “contractual right” to receive benefits from
17 the stations’ clientele, and (3) the Service Stations’ closures will lead to permit loss and it would
18 take effort and time to acquire them. (Docket No. 9 at 14-15). Defendant argues that, in the
19 alternative, Plaintiff’s claims should be dismissed pursuant to the ripeness doctrine since “the
20 alleged events have not even occurred.” Id. at 14.

21 Plaintiff opposed Puma’s motion to dismiss and posits that Defendant’s failure to comply
22 with the permits and the “Regulations of Underground Storage Control” is not speculative
23 considering the EQB has already imposed fines. (Docket No. 16 at 8-9). Additionally, Plaintiff
24 noted that it is at risk of permanently losing its license to operate gas service stations after Puma

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1 failed to pay the EQB fines. Id. Defendant replied to Plaintiff’s opposition and avers that IRR Gas
2 does not address Puma’s lack of standing claim, effectively waiving the argument, and thus its
3 motion to dismiss “should be granted in its entirety.” (Docket No. 23 ¶7).

4 Article III of the Constitution limits federal jurisdiction to actual controversies. U.S. CONST.
5 art. III, § 2, cl. 1. See Katz v. Pershing, LLC, 672 F.3d 64, 71 (1st Cir. 2012). A controversy exists
6 when plaintiff shows “a personal stake in the outcome of the controversy as to assure that concrete
7 adverseness which sharpens the presentation of issues upon which the court so largely depends.”
8 Id. (citing Baker v. Carr, 369 U.S. 186, 204 (1962)). When considering a motion to dismiss for lack
9 of standing before the discovery stage, a court must “accept as true all well-pleaded factual
10 averments in the . . . complaint and indulge all reasonable inferences therefrom in his favor.” Reddy
11 v. Foster, 845 F.3d 493, 497 (1st Cir. 2017) (citing Kerin v. Titeflex Corp., 770 F.3d 978, 981 (1st
12 Cir. 2014)).

13 Standing requires that a plaintiff complies with three elements: “injury in fact, traceability,
14 and redressability.” ITyX Sols. AG v. Kodak Alaris, Inc., 952 F.3d 1, 9 (1st Cir. 2020) (citing Kerin,
15 770 F.3d at 981). On the other hand, the ripeness doctrine “seeks to prevent the adjudication of
16 claims relating to ‘contingent future events that may not occur as anticipated, or indeed may not
17 occur at all.’” Reddy, 845 F.3d at 500 (citing Texas v. United States, 523 U.S. 296, 300 (1998)).
18 During an analysis under this doctrine, the court must analyze “whether there is a sufficiently live
19 case or controversy, at the time of the proceedings, to create jurisdiction in the federal courts.” Id.
20 at 501 (citing Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78, 89 (1st
21 Cir. 2013)). When deciding to withhold a decision for ripeness Court must also analyze “the harm
22 to the parties seeking relief that would come to those parties.” Id. (citing Labor Relations Div. of
23 Constr. Indus. of Mass., Inc. v. Healey, 844 F.3d 318, 330 (1st Cir. 2016)).

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1 As a threshold matter, the Court stresses that even though Plaintiff may have failed to timely
2 object Defendant's lack of standing claim (Docket No. 23 ¶ 7), this does not imply that the
3 undersigning has to automatically dismiss the case on this ground. This is not how our federal
4 judicial system works. See Pinto v. Universidad De Puerto Rico, 895 F.2d 18, 19 (1st Cir. 1990)
5 ("We do not agree with defendant that a court may, without notice, take a failure to respond to a
6 motion to dismiss as a default, warranting dismissal irrespective of substantive merit."). See also
7 Rivera v. Marriott Int'l, Inc., Civil No. 19-1894 (GAG), 2020 WL 1933968 at *5 (D.P.R. 2020).

8 First, the Court must determine if Plaintiff has standing to bring its breach of contract claim.
9 The Court highlights that the party asserting federal jurisdiction bears the burden of demonstrating
10 its standing. See De León v. Vornado Montehiedra Acquisition L.P., 166 F. Supp. 3d 171, 174
11 (D.P.R. 2016). Each element required to prove standing must be supported "with the manner and
12 degree of evidence required at the successive stages of the litigation." Lujan v. Defenders of
13 Wildlife, 504 U.S. 555, 561 (1992).

14 All factual allegations contained in the Complaint, if taken as true, establish an "injury-in-
15 fact" because the stations, under Puma's control, have suffered structural damages that have not
16 been repaired and Defendant has allegedly failed to periodic file reports to the EQB, which has
17 resulted in fines and may evolve to future, more severe sanctions. (Docket Nos. 1-1 ¶ 7, 25; 16 at
18 8). See Reddy, 845 at 500 ("An allegation of future injury may suffice if the threatened injury is
19 'certainly impending,' or [if] there is a "substantial risk" that the harm will occur"); see also Susan
20 B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014). Moreover, Plaintiff plausibly alleges
21 damages in the sum of \$500,000 for each station for the lack of maintenance (Docket No. 1-1 ¶ 24)
22 and for Puma's alleged failure to conserve the properties in good condition. (Docket No. 16 at 7).
23 These allegations can be traced to Puma's purported breached of contract, which IRR Gas can
24 plausibly prove and redress in a favorable decision. Katz, 672 F.3d at 71.

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1 Ultimately, what truly matters at this early stage is that “enough facts [exist] to raise a
2 reasonable expectation that discovery will reveal evidence.” Gov’t of Puerto Rico v. Carpenter Co.,
3 Civil No. 18-1987 (GAG), 2020 WL 962931 at *5 (D.P.R. 2020) (citing Twombly, 550 U.S. at
4 556). That seems to be the case at hand. See Peña Martinez v. Azar, 376 F. Supp. 3d 191, 200
5 (D.P.R. 2019). The Court’s standing analysis further shows that this case has a sufficiently live
6 controversy that shall be ripe for disposition after discovery is conducted. Reddy, 845 F.3d at 500.

7 For all the forgoing reasons, the Court **DENIES** Defendants’ motion to dismiss at Docket
8 No. 9 as to its standing and ripeness claims.

9 **B. Breach of Contract**

10 In the alternative, Defendant argues that it has always complied with its main contractual
11 obligation: rent payments, as stipulated in the service stations’ agreements. (Docket No. 9 at 15).
12 As to IRR Gas’s breach of contract claim, Puma puts forward that it does not have a contractual
13 obligation to upkeep the stations and reconstruct the property, if damaged by any reason. Id. at 16.
14 Defendant avers that the lease agreements state that Plaintiff is responsible for reconstructing the
15 stations to their original condition when they are damaged or destroyed in any event not attributed
16 to the Lessee. Id. Under this scenario, Puma argues that the Complaint accepts that the stations’
17 damages were caused by Hurricane María, which cannot be attributed to Puma’s maintenance of
18 the stations. Id. Moreover, Defendant alleges that Plaintiff generally failed to identify the stations’
19 use and operation damages that Defendant has allegedly yet to repair. Id. at 17.

20 Defendant further avers that Plaintiff failed to state how Puma breached the agreements
21 “essential condition” to maintain the governmental agencies permits necessary for the gas stations’
22 operations and did not to explain how Puma also breached its obligation to provide the equipment’s
23 maintenance. Id. at 18-19. Finally, Defendant posits that it did not breach any obligation to obtain
24 an insurance policy for Station 561 because the lease agreement does not encompass it. Id. at 19.

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1 IRR Gas opposed Puma's Motion to Dismiss and posits that the agreements establishes that
2 Puma was required to make these repairs in order to maintain the properties in "good condition."
3 (Docket No. 16 at 7). Plaintiff alleges that both stations leased to Puma have suffered structural
4 damages, the equipment and structures inside the stations are in bad condition and the electric power
5 has been disconnected. Id. Plaintiff argues, once again, that Defendant did not maintain in good
6 state the stations' equipment, failed to file the environmental reports to EQB, as required by the
7 lease agreements, and failed to obtain the property's insurance policy that include damages to third
8 parties required by the lease of Station 936. Id. at 12-15.

9 In its reply to Plaintiff's opposition, Defendant puts forward that the contract requires IRR
10 Gas to restore the structural damages caused by Hurricane María and Plaintiff failed to "identify
11 how Puma caused the disruption or damages on the property to be under the obligation to repair it."
12 (Docket No. 23 ¶ 10-11).

13 Pursuant to Commonwealth of Puerto Rico law, when a court is faced with a contractual
14 dispute it must first determine if the terms of the contract are clear. See P.R. LAWS ANN. tit. 31,
15 § 3471. "Once a court determines that the terms of the contract are sufficiently clear . . . the court
16 cannot dwell on the 'alleged' intent of the parties at the time they entered into the
17 contract." Fernández-Fernández v. Mun. of Bayamon, 942 F. Supp. 89, 94 (D.P.R. 1996). "Only if
18 the literal terms of the contract are in doubt will it be necessary . . . to examine or interpret the
19 contract with the help of extrinsic evidence." Hopgood v. Merrill Lynch, Pierce, Fenner & Smith,
20 839 F. Supp. 98, 106 (D.P.R. 1993); see also Autoridad de Carreteras y Transportación v. TransCore
21 Atl., Inc., 387 F. Supp. 3d 163, 166 (D.P.R. 2017).

22 After this initial analysis, to prove a claim for breach of contract "a party must sufficiently
23 allege (1) a valid contract, (2) breach of that contract, and (3) resulting damages." TC Investments,
24 Corp. v. Becker, 733 F. Supp. 2d 266, 278 (D.P.R. 2010) (citations omitted). A contract breach only

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requires “a single, readily ascertainable, event.” Quality Cleaning Prod. R.C., Inc. v. SCA Tissue N. Am., LLC, 794 F.3d 200, 206 (1st Cir. 2015).

Additionally, when ruling on a motion to dismiss, a court may consider documents, *e.g.* contracts, submitted by the parties. See Am. Mgmt. And Admin. Corp. v. Solid Rock Wall Sys., 186 F. Supp. 2d 69, 70 (D.P.R. 2002). A court usually converts a motion to dismiss into a motion for summary judgment when evaluating such extrinsic evidence. FED. R. CIV. P. 12(b). Nevertheless, there are exceptions to this rule “when the documents’ authenticity is not in dispute, . . . documents are central to the plaintiff’s claim, or when they are sufficiently referred to in the complaint.” Am. Mgmt. And Admin. Corp. 186 F. Supp. 2d at 71; see also Watterson v. Page, 987 F.2d 1, 3 (1st Cir. 1993). If considering extrinsic evidence to establish the intent of the contracting parties is necessary, then the Court should abstain because this issue must be left to the factfinder, unless the extrinsic evidence is “so one-sided that no reasonable person could decide the contrary.” Wells Real Estate Inv. Tr. II, Inc. v. Chardon/Hato Rey P’ship, S.E., 615 F.3d 45, 54 (1st Cir. 2010); see also Comité Fiestas De La Calle San Sebastian, Inc. v. Cruz, 170 F. Supp. 3d 271, 275-76 (D.P.R. 2016)

The Court has considered and reviewed the lease agreements between the parties (Docket Nos. 9-1; 9-2) and holds that Plaintiff has plausibly plead enough facts to support a breach of contract claim. See Schatz, 669 F.3d at 55. At this stage of the litigation, the claims are sufficient “to raise a reasonable expectation that discovery will reveal evidence” as to the gas stations’ structural damages, the present and future monetary fines and sanctions imposed to Puma and their connection to each parties’ primary and secondary contractual obligations. Twombly, 550 U.S. at 556. Specifically, discovery may reveal “the missing link” as to whether Hurricane María was the main cause for the structural and equipment damages or whether it was the Lessee and/or Lessor’s failure to maintain the station in good condition, previous and after such catastrophic event. See Menard v.

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1 CSX Transp., Inc., 698 F. 3d 40, 45 (1st Cir. 2012). Hence, once discovery concludes and these
2 issues of fact are perhaps resolved, the Court shall be in a better position to interpret the leases
3 agreements and determine who is ultimately responsible for the stations' restoration. See García-
4 Catalán v. United States, 734 F.3d 100, 104-05 (1st Cir. 2013). The Court may revisit the breach of
5 contract argument at a later stage, if warranted.

6 Plaintiff's factual allegations sufficiently comply with the plausibility standard required
7 under Rule 12(b)(6), consequently, the Court hereby **DENIES** Defendants' motion to dismiss at
8 Docket No. 9 as to the breach of contract claim.

IV. Conclusion

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10 For the reasons expressed above, the Court **DENIES** Defendant's motion to dismiss.
11 (Docket No. 9).

SO ORDERED.

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13 In San Juan, Puerto Rico this 22nd day of July, 2020.

14 *s/ Gustavo A. Gelpí*
15 GUSTAVO A. GELPI
16 United States District Judge
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